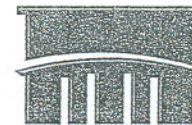




S U F F O L K
U N I V E R S I T Y
LAW SCHOOL



RENÉE M. LANDERS
Associate Professor of Law

August 21, 2008

The Justices of the Supreme Judicial Court
Supreme Judicial Court
John Adams Courthouse
One Pemberton Square
Boston, MA 02108

Attention: Administrative Attorney Barbara Berenson

Re: Comment on the Report of the Ad Hoc Advisory Committee to Study Canon
3B(9) of the Code of Judicial Conduct

To the Justices of the Supreme Judicial Court:

Thank you for providing an opportunity to present comments on the Report of the Ad Hoc Advisory Committee to Study Canon 3B(9) of the Code of Judicial Conduct. The views stated in this letter are informed by considering the legitimacy of judicial decisions in the context of teaching law school courses on administrative law and constitutional law and by my service in recent years on the Massachusetts Commission on Judicial Conduct. I write briefly to express my own views and not the views of the Commission.

The Majority's Memorandum of Observations and Proposed Revisions to Canon 3B(9) and the Separate Statements of Committee members Hon. Jay D. Blitzman and Professor Andrew L. Kaufman reflect very detailed and thoughtful treatment of the considerations relevant to ability of judges to write and speak about cases. While I understand that judges and people interested in the credibility of the judicial system are sometimes frustrated and distressed by ill-informed and sensational criticisms of judicial decisions, I agree with Professor Kaufman's analysis that permitting judges to write at any time about their cases is not a solution to the problem.

It is very important to the integrity of the courts that judges explain their decisions in writing or orally only in the context of judicial proceedings. To allow judges to respond to public criticism by further explaining or subsequently describing the basis for a decision would lead the public to the conclusion that not only was a particular decision unpopular, but that the decisions of courts in particular cases are improperly influenced by public opinion, political controversy, or media criticism. While judges live in the world like other people and their judicial views will be influenced by general societal

values and norms, giving the impression that judicial outcomes in particular cases are subject to popular pressure will give rise to the inference that litigants are at the mercy of public opinion. An independent judiciary was established to dispel that notion by ensuring that the rights of the unpopular receive the protection of the laws. Allowing judges to respond to criticism undercuts that important value. The logical outcome of this reasoning is that the ability of judges to write subsequent opinions should be confined to the three situations Professor Kaufman describes. This requirement to refrain from comment outside the record of a matter even in the face of inaccurate criticism is, regrettably, one of the unpleasant hazards of judicial service. I agree also, with Professor Kaufman's comments about the education exemption in Canon 4B and the need to harmonize that provision with the provisions in Canon 3B(9).

Sincerely,

A handwritten signature in cursive script, appearing to read "Renée M. Landers". The signature is fluid and stylized, with a large initial "R" and a long, sweeping underline.

Renée M. Landers